

STATE OF ARIZONA
CITIZENS CLEAN ELECTIONS COMMISSION

MUR: No. 06-0002

STATEMENT OF REASONS OF EXECUTIVE DIRECTOR

On behalf of the Citizens Clean Elections Commission (“Commission”), the Executive Director hereby provides the Statement of Reasons showing no reason to believe violations of the Citizens Clean Elections Act and or the Commission rules (collectively, the “Act”) occurred.

I. Procedural Background

On June 21, 2006, Jeffrey R. Fox (“Complainant”) filed a complaint against Len Munsil (“Respondent”), a participating candidate for Governor, alleging that the Respondent received in-kind contributions from a corporation (J&G Sales II, Inc.) in violation of A.R.S. § 16-919. The complaint includes a copy of a letter to Joseph Kanefield, State Election Director, from Mr. Brent DeSaye, Vice President of the entity which produced the mailer in question, J&G Sales Inc. Exhibit A. On June 28, 2006, the Respondent responded to the complaint. Exhibit B.

II. Alleged Violations

Complainant alleges that Respondent received an in-kind contribution from J&G Sales II, Inc. in the form of a mailer that was sent out containing express advocacy for the Respondent. According to an admission by J&G Sales II, Inc., included in the complaint, the full color mailer was sent to approximately 13,000 addresses in Arizona and 45,000 addresses total.

As stated in A.R.S. § 16-919(A), *“It is unlawful for a corporation or a limited liability company to make any contribution of money or anything of value for the purpose of influencing an election, and it is unlawful for the designating individual who formed an exploratory committee, an exploratory committee, a candidate or a candidate's campaign committee to accept any contribution of money or anything of value from a corporation or a limited liability company for the purpose of influencing an election.”*

In addition, a participating candidate can only accept early contributions from individuals pursuant to A.R.S. § 16-945(A).

The Respondent claims that J&G Sales II, Inc., did not make an expenditure on the committee’s behalf because the mailer falls under the classification of “editorial” in reference to A.R.S. § 16-901(8)(a) which states that an expenditure does not include, *“A news story, commentary or editorial distributed through the facilities of any telecommunications system, newspaper, magazine or other periodical publication, unless the facilities are owned or controlled by a political committee, political party or candidate.”*

The mailer was essentially a sales catalog, and does not appear to fall under the “newspaper, magazine or other periodical publication” classification. Therefore, the mailer is an expenditure.

The Respondent, and Brent Desaye, Vice President of J&G Sales II, Inc., both deny any mutual coordination between the two in the production of mailer. Mr. Desaye states, “In no way was our message developed in coordination with the candidate Munsil or anyone from the political committee, Len Munsil for Governor.” The Respondent’s response states no one from the campaign had “any control whatsoever” on the mailer in question.

A.R.S § 16-901(14) defines Independent Expenditure as, “...*an expenditure by a person or political committee, other than a candidate's campaign committee, that expressly advocates the election or defeat of a clearly identified candidate, that is made without cooperation or consultation with any candidate or committee or agent of the candidate and that is not made in concert with or at the request or suggestion of a candidate, or any committee or agent of the candidate.*”

Without any proof of mutual coordination in the production of this mailer, I’ve concluded this is not an in-kind contribution from J&G Sales II, Inc. In this instance, the expense made by the corporation fits the definition of Independent Expenditure. Subject to this classification, the Respondent’s participating opponent in the 2006 Primary election may be eligible for matching funds, in accordance with A.R.S § 16-952(C).

III. No Reason to Believe Finding

Based on the complaint, and the Respondent’s response, the Executive Director recommends the Commission find no reason to believe violations of the Act or Commission rules occurred. Pursuant to A.A.C. R2-20-206, the Commission shall dismiss the complaint upon finding no reason to believe the alleged violations occurred.

Dated this __ day of July, 2006

By:

Todd Lang